

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

C.A. No. 10-40095-FDS

ANTHONY HAYES,)
Plaintiff)
)
v.)
)
P.O. DARNELL McGEE, P.O. JAMES)
O'ROURKE, SGT. KENNETH)
DAVENPORT, LT. TIMOTHY)
O'CONNOR and GARY GEMME, Chief)
of Police, in their individual capacities and)
MICHAEL V. O'BRIEN, City Manager,)
and the CITY OF WORCESTER,)
Defendants)

DEFENDANTS' EMERGENCY MOTION TO QUASH
DEPOSITION SUBPOENA OF PAUL W. NOONE, JR.

Now come Defendants Darnell McGee, James O'Rourke, Kenneth Davenport, Timothy O'Connor, Gary Gemme, Michael V. O'Brien and City of Worcester, and jointly move, pursuant to Fed. R. Civ. P. 26(c) and 45(c)(3), to quash the deposition subpoena of Police Officer Paul W. Noone, Jr. in this case, which is scheduled to take place on Friday, March 2, 2012, at 3:00 p.m.; or, in the alternative, for a protective order to restrict the deposition to questions regarding Plaintiff's March 1, 2007 arrest that gave rise to Plaintiff's complaint of excessive use of force.

Fed. R. Civ. P. 26(c) provides that, upon a showing of good cause, the presiding court "may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression or undue burden or expense." Even more pertinently, Fed. R. Civ. P. 45(c)(3)(A)(iv) commands that a court "shall" quash or modify a subpoena if the subpoena "subjects a person to undue burden."

Heidelberg Americas, Inc. v. Tokyo Kikai Seisakusho, Ltd., 333 F.3d 38, 41 (1st Cir. 2003).

As a showing of good cause, Defendants state the following.

This case concerns Plaintiff's allegations that excessive force was used in the course of his September 1, 2007 arrest by Worcester police officers, pursuant to the execution of a search warrant for cocaine and drug paraphernalia at 5 Sycamore Street, Worcester, MA, of which Plaintiff was the target. Officer Noone authored a supplemental narrative to the incident report concerning Plaintiff's arrest, consisting of only two sentences and indicating that he conducted "a search which resulted in recovering plastic sandwich baggies that I found on top of the bureau." Defendants have produced a further interdepartmental correspondence report of Officer Noone that indicates he was not part of the three-officer entry team into the apartment when the alleged excessive force occurred. That information has been corroborated by the named defendant officers, as well as Officer Larry Williams, who have all been deposed in this case. Plaintiff alleges that named defendant Darnell McGee used excessive force in placing him under arrest; thus, the identity of the police officer allegedly involved is not at issue. Officer Noone's only involvement in the alleged incident was the search of a bureau and the recovery of plastic sandwich baggies.

Defendants' counsel has reiterated the limited nature of Officer Noone's information regarding the alleged incident during conversations with Plaintiff's counsel, but Plaintiff's counsel insists on pursuing the deposition of Noone without justification. Thus, Defendants can only assume that Plaintiff's insistence on pursuing a deposition that is not expected to be meaningful is an effort to annoy, embarrass, oppress or cause undue burden and expense to Defendants, or to seek information that is unrelated to the arrest incident that is at issue in this case.

WHEREFORE, Defendants hereby move to quash the deposition subpoena for Paul W. Noone, Jr. to bar the deposition from going forward on March 2, 2012; or, in the alternative, for a protective order restricting Plaintiff's deposition questions to those related to Plaintiff's March 1, 2007, arrest and the execution of the search warrant on that date.

DARNELL MCGEE
JAMES O'ROURKE
KENNETH DAVENPORT
TIMOTHY O'CONNOR
GARY GEMME
MICHAEL V. O'BRIEN and
CITY OF WORCESTER

By their attorneys,

David M. Moore
City Solicitor

/s/ Wendy L. Quinn

Wendy L. Quinn (BBO #653954)
Assistant City Solicitor
City Hall, Room 301
455 Main Street
Worcester, MA 01608
Telephone: (508) 799-1161
quinnwl@worcesterma.gov

CERTIFICATE OF LOCAL RULE 7.1 CONFERENCE

I, the undersigned, hereby certify that Defendants' counsel spoke with Plaintiff's counsel in a good faith attempt to resolve or narrow the issues presented by this Motion.

/s/ Wendy L. Quinn

Wendy L. Quinn
Assistant City Solicitor

CERTIFICATE OF SERVICE

I, Wendy L. Quinn, hereby certify that, on this 22nd day of February, 2012, the within Defendants' Emergency Motion to Quash the Deposition Subpoena of Paul W. Noone, Jr. was served upon all counsel of record through this Court's electronic filing system as identified on the Notice of Electronic Filing.

/s/ Wendy L. Quinn
Wendy L. Quinn
Assistant City Solicitor